

**United States Department of Labor
Employees' Compensation Appeals Board**

L.P., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Mayaguez, PR, Employer**

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**Docket No. 07-2290
Issued: March 4, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 5, 2007 appellant filed a timely appeal of the January 23 and August 10, 2007 merit decisions of the Office of Workers' Compensation Programs, finding that he did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 29, 2006 appellant, then a 58-year-old revenue officer, filed an occupational disease claim. On February 10, 1999 he first became aware of stress, anxiety and depression. On March 22, 1999 appellant first realized that these conditions were caused by his federal employment. He stopped work on June 29, 2006.

In an accompanying narrative statement, appellant noted that he had a stressful job and described his work duties. He alleged that his emotional condition began in 1997 and was aggravated at the end of 1998. In 1990, he was detailed to the examination division and performed his duties well for eight years. In 1998, he returned to his original position in the collection division. Appellant stated that as a revenue examination officer he was required to conduct examinations in the field at taxpayers' homes. He alleged that his problems started in 1997 when Michael Morel, a group manager in the collection division, advised him that his "entrances and exits" from the examination division unbalanced the group. Appellant tried to explain to Mr. Morel why he was required to split his workday between the field and office. He alleged that Mr. Morel informed his managers, Luis Colon, Cinthia Vargas and Hector Davila, and a district director, Robert Keller, that he was not performing his work duties and that he misused government time. As a result, Mr. Colon conducted an audit of appellant's desk which revealed that he was performing outstanding work. On September 30, 1998 appellant was instructed to return to his revenue officer position in the collection division. He stated that Mr. Davila tried to convince Mr. Keller to provide an extension for him to remain in his detail assignment so that he could become a job instructor for a new group of revenue officers. Mr. Davila informed appellant that the extension was denied due to heavy pressure Mr. Keller received from Mr. Morel. On October 8, 1998 appellant reluctantly returned to the collection division. He alleged that the employing establishment did not provide him with any formal training regarding a new regulation and computer program and that he was only assigned a revenue officer to help him with the transition. Appellant related that it was difficult for him to adjust to the new job requirements and his performance appraisal dropped from outstanding and fully successful to average. He alleged that Gladys Santiago, a group manager, observed him all the time and supervised his work extensively. Appellant suspected that Ms. Santiago monitored his work due to Mr. Morel's prior comments. During this time, he was reported and investigated by the employing establishment for alleged misuse of government time. Appellant stated that he was cleared by the investigation. He was not selected for a revenue agent position that he applied for in 2000. Appellant contended that employees less qualified than him were selected for the position. He filed a grievance regarding this matter and the employing establishment determined that he was not best qualified for the position due to a low performance appraisal. Appellant received low performance appraisals from 1998 to 2004.

In a June 20, 2006 medical report, Dr. Mayra del C. Rosado, a psychiatrist, stated that appellant sustained a recurrent major depressive disorder that was moderate without psychotic features, anxiety and acute stress disorders on Axis I. She provided no diagnosis on Axis II and III. Dr. del C. Rosado listed occupational problems on Axis IV and a global assessment functioning (GAF) score of 58 on Axis V. She opined that appellant would continue to suffer from depression and anxiety at work. Dr. del C. Rosado concluded that he was totally disabled for work.

A June 28, 2006 report of Dr. Ingrid A. Berrios, a psychiatrist, stated that appellant suffered from recurrent major depression that was secondary to his present job situation. Appellant advised Dr. Berrios that he performed work that was supposed to be performed by more than one person.

An undated report of Norma Jean Garcia Trabal, Ph.D., a clinical psychologist, indicated that appellant was evaluated on June 13, 20 and 26, 2006. She reviewed a history that since

1997 appellant had been experiencing emotional discomfort, depression and anxiety, due to work-related problems. Dr. Trabal noted that he had a score of 34 on the Beck Depression Inventory test which indicated severe depression. Appellant also had a score of 40 on a de IDARE Anxiety Questionnaire which represented a high level of anxiety. Dr. Trabal diagnosed depression disorder on Axis I. She reported no diagnosis on Axis II and III. Dr. Trabal listed work-related problems on Axis IV. She stated that appellant had a GAF score of 60.

A June 27, 2006 report of Virgilio Rodriguez-Rivera, Ph.D., a clinical psychologist, reviewed a history that appellant experienced ongoing personal distress and work-related conflicts and stressors. Dr. Rodriguez-Rivera reported essential normal findings on mental status examination. He diagnosed acute stress disorder on Axis I and phase of life on Axis II. Dr. Rodriguez-Rivera deferred a diagnosis on Axis III. He found work-related problems and retirement on Axis IV and a GAF score of 75 on Axis V.

By letter dated July 6, 2006, the Office requested that the employing establishment provide comments regarding appellant's allegations, a copy of his position description and comments regarding his ability to perform the duties of this position within 30 days. The employing establishment did not respond within the allotted time period.

On July 6, 2006 the Office also advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

In a July 16, 2006 letter, appellant noted the treatment of his emotional condition. He stated that he experienced no stress outside of work. Appellant was married with children and he noted his hobbies. By letter dated August 7, 2006, he submitted a list providing intermittent dates from January 2002 through August 8, 2006 that he used sick leave due to his emotional condition.

By decision dated January 23, 2007, the Office denied appellant's emotional condition claim. It found that his low performance appraisal and the monitoring of his work by his supervisors constituted administrative matters and that he failed to establish error or abuse. The Office further found that appellant's return to the collection division and the denial of the revenue agent position did not constitute compensable employment factors. However, since the employing establishment did not respond to the July 6, 2006 developmental letter, appellant's allegation that he did not receive adequate training regarding a new regulation and computer program was established as factual and, thus, constituted a compensable employment factor. The Office reviewed the medical evidence of record and found that it was insufficient to establish that his emotional condition was caused by the accepted employment factor.

On February 14, 2007 appellant requested an oral hearing before an Office hearing representative.

In a March 19, 2007 report, Dr. Trabal noted that appellant was feeling sad and anxious about his current job situation. She recommended continued psychological treatment.

At the May 3, 2007 hearing, appellant reiterated his contentions as to the cause of his emotional condition. In a May 3, 2007 statement, he contended that the medical evidence of

record was sufficient to establish a causal relationship between his emotional condition and the accepted employment factor.

In a May 24, 2007 report, Dr. Berrios reiterated the history that appellant was overworked due to a staff shortage. She noted that he had been performing the same stressful job for 18 years. Dr. Berrios noted that appellant received outstanding performance appraisals and awards but, as a result of staff shortages and the amount of work he had to perform, he suffered anxiety, depression and burnout. She opined that his exposure to job-related stressors for a prolonged period of time affected his emotional condition and his overall functioning. Appellant submitted a copy of his July 15, 1998 performance appraisal which indicated low ratings. In a July 11, 2007 memorandum, he advised an Office hearing representative that he had been released to return to work by his attending physician. Appellant returned to work on July 2, 2007.

By decision dated August 10, 2007, an Office hearing representative affirmed the January 23, 2007 decision. The hearing representative found that the medical evidence failed to establish that his emotional condition was causally related to the accepted compensable employment factor, the employing establishment's failure to provide him with computer program and regulation training in 1998.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁰ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹¹

ANALYSIS

Appellant alleged that he sustained an emotional condition causally related to various factors of his federal employment. The Office accepted as a compensable factor, the employing establishment's failure to provide appellant with adequate training related to a new regulation and computer program.

Appellant also alleged that he was harassed by his supervisors, Mr. Morel and Ms. Santiago. He stated that Mr. Morel told him that his "entrances and exits" from the office

⁶ *Lillian Cutler*, *supra* note 3.

⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

unbalanced the group. Appellant further stated that Mr. Morel told Mr. Colon, Ms. Vargas, Mr. Davila and Mr. Keller that he was not performing well and that he had misused government time. He tried to explain to Mr. Morel, that as a revenue examination officer, he was required to spend time in the field to conduct examinations at taxpayers' homes. Appellant further alleged that Ms. Santiago observed him constantly and supervised his work extensively. The Board has held that actions of an employer which the employee characterized as harassment may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that the harassment did in fact occur.¹² Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.¹³ Appellant did not submit any witness statements in support of his allegation of harassment by Mr. Morel. The Board, therefore, finds that appellant has not established a factual basis for his allegation of harassment by Mr. Morel. He did not provide any probative evidence that harassment occurred as alleged.¹⁴ Therefore, appellant did not establish a compensable employment factor with respect to harassment.¹⁵ Appellant's exception to the monitoring of his work by Ms. Santiago pertains to an administrative or a personnel matter,¹⁶ which is noncompensable unless the employee shows that she erred or acted unreasonably.¹⁷ His adverse reaction to what he described as extensive scrutiny is not covered under the Act as he did not submit evidence to establish error or abuse on the part of Ms. Santiago.

Appellant's allegations regarding the investigations,¹⁸ denial of a request for a transfer¹⁹ and promotion²⁰ and low performance ratings²¹ at the employing establishment and his filing of a grievance²² and the assignment of work²³ relate to noncompensable administrative and personnel matters. He did not submit any evidence substantiating that the employing establishment erred or acted abusively in these matters. Thus, the Board finds that appellant did not establish compensable factors of employment.

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

¹⁴ *James E. Norris*, *supra* note 12.

¹⁵ *Jamel A. White*, 54 ECAB 224 (2002).

¹⁶ *Lori A. Facey*, 55 ECAB 217, 224 (2004); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

¹⁷ *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

¹⁸ *Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁹ *Ernest J. Malagrida*, 51 ECAB 287 (2000).

²⁰ *Tanya A. Gaines*, 44 ECAB 923 (1993).

²¹ *Felix Flecha*, 52 ECAB 268 (2001).

²² *Michael A. Salvato*, 53 ECB 666, 668 (2002).

²³ *Barbara J. Latham*, 53 ECAB 316 (2002).

The Office accepted as compensable that appellant was not provided training regarding a new regulation and computer software. Appellant's burden of proof, however, is not discharged by the fact that he has established a compensable employment factor. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.²⁴ While it is not disputed that appellant has an emotional condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the emotional condition.

Dr. del C. Rosado stated that appellant suffered from recurrent major depressive disorder that was moderate without psychotic fears and anxiety and acute stress disorders. She opined that he would continue to suffer from these conditions at work. Similarly, Dr. Trabal and Dr. Rodriguez-Rivera found that appellant's depression and stress disorders were caused by work-related problems. However, the reports of Dr. del C. Rosado, Dr. Trabal and Dr. Rodriguez-Rivera provide vague, general statements with no details of the specific work factors that caused or contributed to appellant's condition. They did not explain how or why the accepted employment factor caused or contributed to appellant's emotional condition.

Dr. Berrios opined that appellant's recurrent major depression was secondary to his work assignments. However, she did not opine that appellant's emotional condition was causally related to the accepted employment factor of receiving inadequate training. Moreover, appellant did not establish that his work assignments resulted in his being overworked. This is not a compensable factor of employment.

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed emotional condition is causally related to the accepted compensable employment factor.

CONCLUSION

Appellant has not met his burden of proof in establishing that he developed an emotional condition in the performance of duty.

²⁴ William P. George, 43 ECAB 1159, 1168 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 10 and January 23, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 4, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board